

**SALES AND USE TAX REVIEW COMMISSION
RECOMMENDATION PURSUANT TO P.L. 1999, C. 416**

BILL NUMBER:

S-2208

DATE OF INTRODUCTION:

January 11, 2005

SPONSOR:

Senator Sweeney

DATE OF RECOMMENDATION:

April 8, 2005

IDENTICAL BILL:

COMMITTEE:

Senate Budget and Appropriations Committee

DESCRIPTION:

This bill includes sales and use of pre-written computer software delivered by any means as a sale or use of tangible personal property subject to the New Jersey sales and use tax.

ANALYSIS:

This bill proposes to amend the Sales and Use Tax Act N.J.S.A. 54:32B-1, et seq., to include sales and use of pre-written computer software delivered by tape, disk, CD-Rom, electronically, or by any other means as a sale of tangible personal property subject to New Jersey sales and use tax. Pre-written computer software, often referred to as “canned” or off-the-shelf computer software, may be delivered to the purchaser by a variety of means which may affect whether sales or use tax is due on the sale. This proposed legislation eliminates the means of delivery as a determinative factor of the taxability of the sale or use. Under this bill, the sale of computer software that is not created, written or designed for the exclusive use of a specific customer will be considered a taxable sale regardless of the means of delivery.

This bill reflects the manner in which computer software is currently developed, marketed and sold. This proposed legislation closes the loophole whereby taxpayers can request already tangible software to be delivered electronically to avoid paying tax.

In addition, this bill creates a significant advantage for the State's General Fund. The gain of revenue to the State is enhanced by the fact that pre-written computer software is traditionally an expensive item and a large block of sales tax revenue for the State. As a result of the changes in the law that this bill creates, the State's budgetary crisis will be alleviated since the amount of monies that the State deposits in its General Fund will be increased.

There was discussion concerning that this bill may add to the already heavy tax burden faced by employers and increases the cost of doing business in New Jersey. This bill may force companies to increase consumer costs, downsize or in extreme cases move out of the State resulting in less investment and/or fewer jobs.

RECOMMENDATION:

No recommendation.

COMMISSION MEMBERS FOR PROPOSAL: 3

COMMISSION MEMBERS AGAINST PROPOSAL: 3

COMMISSION MEMBERS ABSTAINING: 0